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DEC 13 2005

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Marlin

Serial No.: 09/704,771

Group: 3712

Filed: 11/03/2000

Examiner: Miller, B

The Honorable Commissioner of
Patents and Trademarks
Washington, D.C. 20231

RESPONSE AFTER FINAL AMENDMENT

Sir:

This is a response to the Office Action mailed December 1, 2005.

IN THE CLAIMS

Please see the attachment

RESPONSE

The Office Action has rejected claim 22 in light of Kelly and Brannon. Applicants respectfully disagree.

First, As applicants previously argued, Brannon does not teach the elements ad defined in the claims as set forth, and applicants explained why in the previous response.

Brannon has no handle which is part of a single, unitary [plastic] wire. In fact, there appears

to be no handle at all. The handle as described in the claims of the present invention is critical for the ability to whip the spring part of the device so that it extends, allowing the device to wrap around the "object of desire." **The handle as described in the present invention is specifically described such that it has no bearing to the handle of Brannon.** In place of the handle described in the present invention, Brannon has a clamp connected to a shank, which in turn is connected to a shank housing, which is further connected to a passing clip. There is no single, unified plastic piece which has **both** a coil and a handle in one unitary structure, nor is there a suggestion or teaching of such a device.

Second, this toy must be made out of plastic. It would not function if made out of metal. The Office Action states that it is well known to make such a wire out of metal. The Office Action is missing the point. This invention is a composition with a purpose or function. The plastic gives this device an elasticity that one does not have when using metal. The whole purpose of submitting a videotape of the use of the invention was so that there would be an understanding of the relation between the material and the invention, and understand the criticality of the use of plastic as a critical element of the invention. Similarly, a review of the videotape would have shown why the use of plastic, and the construction of the handle as designed, differentiate the present invention from the prior art.

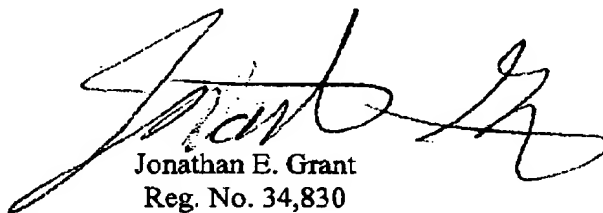
Finally, applicant has amended the application to such that claim I reads "consisting of". Because of the use of the phrase "consisting of," the device excludes the hoop (28), the shank, the clamp, the rod, the clip, and any of the other features of Brannon. Again, if the Patent Office examines the video presented (twice) with the responses, it will be noted that it would not be possible to use the Brannon invention to perform the tricks that can be performed with the present

invention, or would the exclusion of the devices listed above allow for Brannon's invention to be used in the manner taught or allowed by the present invention. Brannon has no handle. Indeed, the length of the handle of the present invention, along with the elasticity and memory of the plastic used, gives the invention its unique properties. These are not features that can simply be added to Brannon in an attempt to use foresight in order create "obviousness."

This invention is now in condition for allowance..

Please call or fax me at (301) 603-9071 if you have any questions or comments.

Respectfully submitted,



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